

EXEMPT ORGANIZATIONS

OCT 22 1982

Employer Identification Number: [REDACTED]

Form Number: [REDACTED]

Tax Years: [REDACTED]

Dear Applicant:

This is a final adverse ruling as to your exempt status under section 501(c)(3) of the Internal Revenue Code.

Our adverse ruling was made for the following reason(s):

You are not organized exclusively for exempt purposes as required by section 501(c)(3). You will not be operated exclusively for exempt purposes as required by section 501(c)(3). You will be operated in furtherance of a substantial commercial purpose. You have failed to establish that your net earnings will not inure to the benefit of private individuals. Also, you have failed to establish that you will serve public rather than private interests.

Contributions to your organization are not deductible under Code section 170.

You are required to file federal income tax returns on the above form. Based on the financial information you furnished, it appears that returns should be filed for the years shown above. These returns should be filed with your key District Director for exempt organization matters within 30 days from the date of this letter unless a request for an extension of time is granted. Processing of income tax returns and assessment of any taxes due will not be delayed because a petition for declaratory judgment has been filed under Code section 7428. Returns for subsequent tax years should be filed with the appropriate service center indicated in the instructions for those returns.

If you decide to contest this ruling under the declaratory judgment provisions of section 7428 of the Code, a petition to the United States Tax Court, the United States Court of Claims, or the United States District Court for the District of Columbia must be filed within 90 days from the date this ruling was mailed to you. Contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment.

After 90 days from the date of this letter, you may reapply for recognition of exemption under section 501(c)(3) by completing a new Form 1023, and mailing it to your Key District Director for exempt organizations matters in Dallas, Texas.

HISTORICAL
Technical

[REDACTED]

In accordance with section 6104(c) of the Code, the appropriate State officials will be notified of this action.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Thank you for your cooperation.

Sincerely yours,

TSI

[REDACTED]
Chief, Exempt Organizations
Technical Branch

cc: [REDACTED]
Attn: EO Group

cc: [REDACTED]

cc: [REDACTED]

[REDACTED]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[REDACTED]	[REDACTED]					
Exemption	[REDACTED]	[REDACTED]					

NOV 12 1981

Dear Applicant:

We have considered your request for a ruling that you are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code.

You were incorporated on [REDACTED] under the laws of the State of [REDACTED], and you amended your Articles of Incorporation on [REDACTED] to provide for, among other items, the disposition of your assets in the event of dissolution. Your purposes as stated in your Article Four of your Articles of Incorporation are:

1. As economic foundations for the purpose of creating job opportunities.
2. To support charitable children's park foundations adjoining properties.
3. To promote the general business interests of the merchants in communities for the collective advantage of all business concerns located therein.
4. To support promotional programs and publicity, support events, decorations, cooperative advertising for other joint endeavors in the general interest and for the general benefit of the merchants in the communities.

Article Five of your Articles of Incorporation makes provision for the issuance of stock in your corporation. The specifics for your common stock issuance plan are contained in your By-Laws, and in the minutes of your [REDACTED] Board of Directors meeting. You plan to issue [REDACTED] shares of common stock in your corporation.

The amendments of [REDACTED], that were made to your Articles, as filed on [REDACTED], incorporate into your Articles a provision governing the dissolution of your corporation. The assets of your organization could at that time either provision was made for the payment of all outstanding liabilities of the corporation, be paid equally to organizations described in section 501(c)(3) of the Internal Revenue Code, and to the heirs of the

founder of your organization, [REDACTED]. However, any land owed by the corporation at that time would be transferred entirely to the heirs of the founder of your organization.

The information submitted with your Form 1023, and information subsequently submitted indicates that you have not yet undertaken any activities. You plan to purchase a sizeable tract of land--perhaps [REDACTED] acres-- and will use that land for various purposes. Title to the land will be held by your founder. You would begin by building and operating a day-care center and Montessori school on a portion of the land. The school would be operated on a for-profit basis, and its purpose for existence would be to raise funds for the implementation of your second activity, which would be a manufacturing plant producing clothing for children, some items of which would be the designs on which your founder holds patents. When sufficient funds were accumulated to start the manufacturing operation, the day-care center and Montessori school would be discontinued. At this point you would open a children's park on the tract of land which you will purchase, which park will contain a shrine to our Lady of Fatima, and possibly bicycle trails. On part of the land, you would establish a tree farm, also on a for-profit basis for the purpose of raising revenue. You would also lease various portions of your land that was commercially desirable (your land would be partially bounded by an Interstate highway), also for the purpose of raising revenue for your ongoing projects. The manufacturing operation would be operated on a for profit basis, and if it is successful, you would open more plants both in this country and overseas, thereby providing jobs wherever your plants would be located.

Your President, [REDACTED], your Vice-President, and your Secretary-Treasurer, [REDACTED], would each receive \$[REDACTED] annual salaries for carrying out their duties as officers of your corporation.

Section 501(c)(3) of the Code provides for the exemption of organizations that are organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be organized and operated exclusively for one or more of the purposes specified in that section. If an organization fails to meet either the organizational or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1) of the regulations states that an organization is organized exclusively for one or more exempt purposes only if its articles of incorporation limit the purposes of such organization to one or more exempt purposes; and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. It further provides that an organization does not meet the organizational test if its articles provide that its assets would, upon dissolution, be distributed to its members or shareholders.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization is regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of exempt purposes.

Section 1.501(c)(3)-1(c)(2) states that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(e) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes, and if the organization is not operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513.

Revenue Ruling 71-447, C.B. 1971-2, 230, states that an organization that does not have a racially nondiscriminatory policy as to students does not qualify as an organization exempt from Federal income tax. Revenue Procedure 75-50, C.B. 1975-2 587, sets forth guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption under section 501(c)(3) of the Internal Revenue Code of 1954 have racially nondiscriminatory policies as to students.

Section 4.01 of Rev. Proc. 75-50 requires that a school must include a statement in its charter, by-laws, or other governing instrument, or in a resolution of its governing body, that it has a racially non-discriminatory policy as to students and therefore does not discriminate against applicants and students on the basis of race, color, and national or ethnic origin.

Section 4.02 of Rev. Proc. 75-50 requires that every school must include a statement of its racially nondiscriminatory policy as to students in all its brochures and catalogues dealing with student admissions, programs, and scholarships. It also requires that every school must include a reference to its racially nondiscriminatory policy in its other written advertising that it uses as a means of informing prospective students of its programs.

Section 5.01 of Rev. Proc. 75-50 requests information as to the racial makeup of student body, faculty, and administration of every applicant organization, and also other information which assists the Service in determining whether an organization has a racially nondiscriminatory policy as to students.

Section 7.01 of Rev. Proc. 75-50 requires that every exempt private school must maintain for a minimum period of three years, beginning with the year after the year of compilation or acquisition, certain records for the use of the Service. The four specific groups for records required are described in section 7.01.

Based on the information submitted, we have concluded that you are neither organized nor operated exclusively for any of the purposes enumerated in section 501(c)(3).

You are not organized exclusively for section 501(c)(3) purposes, as you will issue stock in your corporation, as provided for in Article Five of your Articles of Incorporation. You are not organizationally prohibited from paying dividends to shareholders, and also under the provisions of your Articles of Incorporation, in the event of dissolution, you are required to satisfy all liabilities of your corporation, which would include the redemption of all outstanding shares of stock before any remaining funds could be distributed. Consequently, your earnings may inure to the benefit of private shareholders. Therefore, it cannot be said that you are organized exclusively for one or more of the purposes enumerated in section 501(c)(3).

Also, certain of your purposes as enumerated in Article Four of your Articles of Incorporation, viz., promoting the general business interests of merchants and creating job opportunities, are not purposes enumerated in section 501(c)(3).

Finally, your provisions for dissolution in your Articles of Incorporation do not meet the requirements of the regulations, as Article Nine provides for the disposition of part of your assets to the heirs of your founder in addition to distributions made exclusively to section 501(c)(3) organizations.

You will not be operated exclusively for section 501(c)(3) purposes, as your operations will generate income which will inure to private shareholders or individuals by virtue of both stock ownership, and the above described dissolution provisions in your Articles.

Secondly, the principal proposed activities of your organization--the day-care center and school, the treefarm, and the manufacturing operations--which activities are to be conducted for the sole purpose of producing a profit, are activities which will constitute the conduct of a trade or business. As these activities will not be activities which in themselves further an exempt purpose, and as these three activities will be the principal activities of your organization for the foreseeable future, the provisions of section 1.501(c)(3)-1(e) prevent your qualification for recognition of exemption under section 501(c)(3).

Thirdly, your operations will produce income that will be used to pay indebtedness on real estate whose title will be held at all times by your founder, and this will constitute inurement of income to your founder. Also, you have not furnished reasonable proof that the salaries to be paid to your officers would constitute reasonable compensation for services performed.

Finally, the income provided by the use by your clothing manufacturing operations of clothing design patents held by your founder would constitute inurement of income to your founder.

With regard to your day-care and school operations, as you do not have the prescribed statement of nondiscriminatory policy in your charter or by-laws, nor has your governing body passed such a resolution, you do not meet the requirements of section 4.01 of Rev. Proc. 75-50.

You have not satisfied the requirements of section 4.02 of Rev. Proc. 75-50, as you have not indicated that you would include the statement required by section 4.02 in all future brochures, catalogues, etc.

You have not satisfied the requirements of section 5.01 of Rev. Proc. 75-50, as you have not provided an estimate of the racial makeup of the student body, faculty, and administration for your first year of operation, nor have you provided the other information required by section 5.01.

Also, you have not satisfied the requirements of section 7.01 of Rev. Proc. 75-50, as you have not indicated your intention to keep the records specified therein when your day care center and school begins its operation.

Accordingly, it is held that you do not qualify for recognition of exemption from Federal income tax under section 501(c)(3) of the Code.

You are required to file Federal income tax returns on Form 1120. Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this action if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted, in duplicate, within 21 days from the date of this letter, and must be signed by one of your principal officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your principal officers he must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed action in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If we do not hear from you within 21 days from the date of this letter, this action will become final and copies will be forwarded to the District Director, Detroit, Michigan, which is your key District for exempt organization matters. Thereafter, any questions about your Federal income tax status or the filing of tax returns should be addressed to his office. The appropriate state officials will also be notified of this action in accordance with section 6104(c) of the Code.

Sincerely yours,

Chief, Rulings Section 2
Exempt Organizations
Technical Branch

cc: [redacted]
Attn: EO Group

cc: [redacted]

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Code	[redacted]	[redacted]					